

HONORABLE JAMES L. ROBART

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

MICROSOFT CORPORATION,

Plaintiff,

v.

MOTOROLA INC., et al.,

Defendant.

No. C10-1823-JLR

MICROSOFT'S SECOND NOTICE OF
SUPPLEMENTAL AUTHORITY
REGARDING DEFENDANTS'
MOTION FOR SUMMARY
JUDGMENT

MOTOROLA MOBILITY, INC., et al.,

Plaintiffs,

v.

MICROSOFT CORPORATION,

Defendant.

MICROSOFT'S SECOND NOTICE OF
SUPPLEMENTAL AUTHORITY REGARDING
DEFENDANTS' MOTION FOR SUMMARY
JUDGMENT

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1 Microsoft respectfully submits as additional supplemental authority in support of its
 2 Opposition (Dkt. No. 740) to Defendants' Motion for Summary Judgment (Dkt. No. 733) the
 3 United States Trade Representative's August 3, 2013 Disapproval of the U.S. International
 4 Trade Commission's Determination in ITC Investigation No. 337-TA-794, attached as Exhibit
 5 1.

6 The ITC's determination in the 794 Investigation involving Samsung and Apple was
 7 submitted by Motorola as supplemental authority in support of its summary judgment motion
 8 on July 11, 2013. (*See* Dkt. No. 738.) Motorola stated that the ITC had rejected the argument
 9 "that an exclusion order should be unavailable for a standard essential patent" and directed the
 10 Court to a particular passage of the determination "finding that Samsung is entitled to an
 11 exclusionary remedy because 19 U.S.C. §§ 1337(a)(1)(B) allows the Commission to issue
 12 exclusionary orders for any patent, regardless of whether it is an SEP." (*Id.* at 1.)

13 The ITC's exclusion order on SEPs has been overruled. Acting on the authority of the
 14 President to "disapprove an order[of the ITC] on policy grounds," Ex. 1 at 1, the U.S. Trade
 15 Representative states: "I have decided to disapprove the USITC's determination to issue an
 16 exclusion order and cease and desist order in this investigation." Ex. 1 at 3. The exclusion
 17 order on SEPs that was the subject of Motorola's prior submission, as well as its briefing and
 18 argument at the July 31, 2013 hearing, will not go into effect.

19 DATED this 3rd day of August, 2013.

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CERTIFICATE OF SERVICE

I, Nathaniel Love, swear under penalty of perjury under the laws of the State of Washington to the following:

1. I am over the age of 21 and not a party to this action.
2. On the 3rd day of August, 2013, I caused the preceding document to be served on counsel of record in the following manner:

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